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Supreme Court, U. S.
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APR 16 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-1398

EDMOND VARNER LITTLEFIELD,

Petitioner

VERSUS

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Travis D. Shelton
1507 13th Street
Lubbock, Texas 79401

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1. Agents of the Federal Bureau of Investigation did not have sufficient probable cause to arrest the Petitioner and search his person because the facts known by the agents at the time of the arrest were insufficient to meet the requirements of Title 18 U.S.C. section 3052 and the Fourth Amendment to the Constitution of the United States.	8
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

NO.

EDMOND VARNER LITTLEFIELD,

Petitioner

versus

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner Edmond Varner Littlefield respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Tenth Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals (unpublished) appears in Appendix A, infra. No opinion was rendered by the District Court for the Western District of Oklahoma.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit (Appendix B, infra) was entered on February 20, 1973. A timely petition for rehearing was denied on March 19, 1973 (Appendix C, infra), and this petition for certiorari was filed within 30 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

1. Whether the petitioner's arrest by agents of the Federal Bureau of Investigation violated the statutory requirements of Title 18 U.S.C. section 3052 governing probable cause for arrest without a warrant and, therefore, his rights under the Fourth Amendment to the Constitution of the United States.

2. Whether, in view of the general practice of United States Courts of Appeal not to review sentences imposed by lower courts, an Appellate Court has a duty to reverse a sentence which is imposed in violation of the petitioner's rights under the Fifth and Sixth Amendments to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States of America, Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath

> or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Constitution of the United States of America, Fifth Amendment:

> No person shall be *** compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law *** .

Constitution of the United States of America, Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C.:

> §2113. Bank robbery and incidental crimes

(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take,

from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or

Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny--

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

* * *

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both.

Title 18 U.S.C.:

§3052. Powers of Federal Bureau of Investigation

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau

of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenaes issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

Title 18 U.S.C:

§4208. Fixing eligibility for parole at time of sentencing

(a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may

(1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than, but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may become eligible for parole at such time as the board of parole may determine.

* * *

STATEMENT OF THE CASE

On the morning of February 14, 1972, a man armed with a pistol robbed the First National Bank of Hammond, Oklahoma, and escaped in a yellow Ford pickup. The pickup was later found abandoned on a farm outside Hammond. During the subsequent investigation, agents of the Federal Bureau of Investigation learned that a red Chevrolet automobile had been observed by an area resident three days before the robbery parked beside a small farm-to-market road about twelve miles from Hammond. For some undisclosed reason the witness had written down the Oklahoma license number on the car, but he could not state whether anyone was in the automobile and could not identify anyone in connection with it. A young high school student was also discovered to have seen a similar red automobile parked near the edge of Hammond on the morning of the robbery. He had noticed that there were people in the automobile, but he did not know how many and could not identify anyone.

Using the information obtained from these two persons, the agents traced the license number through the records of the Oklahoma Tax Commission and determined that the automobile belonged to Edmond Varner Littlefield, a resident of Cyril, Oklahoma, a small town located approximately 120 miles from Hammond. Ten days after the robbery, on February 24, 1972, F.B.I. agents, acting without a warrant, arrested Littlefield near his home and charged him with the bank robbery, even though he did not match the description of the robber given by the employees of the bank. The second defendant, Garland D. Gorden, was arrested almost two months later, on April 18, 1972, and he did match the description of the robber.

Both defendants pleaded not guilty at their arraignments in May, 1972. On June 6, 1972, Gorden was interrogated by agents of the F.B.I. and gave a signed statement admitting his part in the robbery and implicating the Petitioner Littlefield. Then, on June 14, 1972, the opening date of the trial, Gorden changed his plea from not guilty to guilty and agreed to testify against Littlefield.

After a jury trial in the United States District Court for the Western District of Oklahoma, the Petitioner Edmond Varner Littlefield was convicted of bank robbery with a dangerous weapon in violation of 18 U.S.C. §2113(a) and (d) and sentenced the same day by the judge to eighteen years in prison. Gorden pleaded guilty to a charge of bank robbery [18 U.S.C. §2113(a)] and was sentenced twenty-six days later, on July 11, 1972, to ten years in prison under 18 U.S.C. §4208(a)(2).

Following his conviction in district court, the petitioner Littlefield filed an appeal in the Tenth Circuit Court of Appeals. Petitioner's conviction was subsequently affirmed on February 20, 1973, and his petition for rehearing was denied on March 19, 1973. The Court of Appeals also denied Petitioner's motion for a stay of mandate to allow the filing of this petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT

1. AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION DID NOT HAVE SUFFICIENT PROBABLE CAUSE TO ARREST THE PETITIONER AND SEARCH HIS PERSON BECAUSE THE FACTS KNOWN BY THE AGENTS AT THE TIME OF THE ARREST WERE INSUFFICIENT TO MEET THE REQUIREMENTS OF TITLE 18, U.S.C. section 3052 AND THE FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The authority of agents of the Federal Bureau of Investigation to make felony arrests without a warrant is statutory and is restricted to offenses committed "in their presence" or to instances where they have "reasonable grounds to believe that the person to be arrested has committed or is committing" a felony. 18 U.S.C. section 3052. "The statute states the constitutional standard, for it is the command of the Fourth Amendment that no warrants for either searches or arrests shall issue except 'upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'" Henry v. United States, 361 U.S. 98 (1959).

The question in this case comes down to whether prudent men in the shoes of the arresting agents would have seen and known enough to permit them to believe that the Petitioner Littlefield was violating or had violated the law. There is nothing in the record to indicate that the arresting agents were aware, before the arrest, of any relationship between the Petitioner's red Chevrolet and the yellow pickup used in the robbery or between the petitioner and the person who robbed the bank. The testimony of Agent

Mulcahy, the only arresting officer to testify at the trial, was that the arrest was based on information obtained in his interviews with two persons--Clark Hodge and C. E. Watkins, Jr. All that Agent Mulcahy learned from these two witnesses was the description and license number of an automobile which had been seen by one witness twelve miles from Hammond on the Friday before the bank robbery on Monday and by the other near the edge of Hammond early on the morning of the robbery. A search of Caddo County, Oklahoma records revealed that the license number had been issued to E. V. Littlefield of Cyril, Oklahoma, but neither of the witnesses could identify anyone in the automobile, and neither could in any way connect the automobile or its passengers with the bank robbery or with the yellow pickup reported to have been used in the robbery.

The necessary link between the petitioner and the person who robbed the bank was missing at the time of the arrest and cannot be supplied by presumption. Surely no magistrate would have been willing to issue an arrest warrant based solely on the testimony of these two witnesses. The agents making the arrest had not obtained an arrest warrant, even though there was plenty of time to do so. The record simply does not present sufficient evidence to meet either the statutory requirement of "reasonable grounds" (18 U.S.C. §3052) or the constitutional requirement of "probable cause." U.S.C. Const. Amend. 4.

Petitioner strongly urges his contention that the arrest was illegal and that all evidence obtained from him subsequent to the arrest should have been suppressed as "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 271 (1963), and moves for reversal on this point.

2. PETITIONER LITTLEFIELD WAS PUNISHED BY THE TRIAL COURT FOR EXERCISING HIS CONSTITUTIONALLY PROTECTED RIGHTS AGAINST SELF-INCRIMINATION AND TO BE TRIED BY A JURY, IN DIRECT VIOLATION OF THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; AND THE REFUSAL OF THE TENTH CIRCUIT COURT OF APPEALS TO REVIEW THE SENTENCE UNDER THESE PARTICULAR CIRCUMSTANCES IS IN DIRECT CONFLICT WITH THE HOLDINGS OF OTHER COURTS OF APPEAL AND WITH THE UNITED STATES SUPREME COURT.

"An accused cannot be punished by a more severe sentence because he unsuccessfully exercised his constitutional right to stand trial rather than plead guilty." Baker v. United States, 412 F2d 1069 (5th Cir. 1969). Mr. Justice Black stated in his concurring opinion in North Carolina v. Pearce, 395 U.S. 711 (1969) that the imposition of a more severe penalty by the trial judge because a defendant "insisted on a trial by jury" would be "flagrantly unconstitutional." Yet the Tenth Circuit is apparently content to ignore the constitutional issues and leave all discretion with the trial court, even when that discretion is abused. "This court has repeatedly stated that so long as the sentence imposed by the trial court is within statutory limits, the trial court has sole discretion to determine the sentence. United States v. Stidham, 459 F2d 297 (10th Cir.)" (See court's opinion, p. 6, Appendix A, Infra.) It is interesting to note that Stidham was decided by the same judge in the same district court as the instant case.

Even though sentences which do not exceed the maximum limit set by statute are not ordinarily subject to review by the court

of appeals, there is no doubt that the appellate court has that power. Thomas v. United States, 368 F2d 941 (5th Cir. 1966)

In the instant case only one inference may be logically drawn from the facts--the petitioner was punished for exercising his right to a trial. Nothing in the record points to any reason or extenuating circumstance which would justify giving the Petitioner such a disproportionately high sentence in comparison to his co-defendant, Gorden. The defendant Gorden was older, had more education, had previously served time in prison and was given an undesirable discharge from military service. It is undisputed that Gorden was the only one who entered the bank and placed lives in danger with a gun, but petitioner was the only one convicted of robbing a bank with a dangerous weapon. By Gorden's own testimony, petitioner waited on the edge of town and never came near the bank. Petitioner was as cooperative as possible in saving the Government time and money through the use of stipulations whenever possible. The defendant Gorden pleaded guilty and received a ten (10) year sentence, but with the possibility of early parole under 18 U.S.C. section 4208 (a)(2). (See Appendix D, infra). In contrast, the petitioner, who pleaded not guilty and demanded a trial by jury, was sentenced to eighteen (18) years in prison without benefit of the accelerated parole possibility. The trial court did not even wait for a pre-sentence report from the probation officer, but sentenced the petitioner to prison on the same day that the jury handed down its verdict of guilty. Gorden was not sentenced until twenty-six days after the trial. Clearly, the wide variation between the two sentences, in light of the relative culpability of the two defendants and their past

records, reveals that the Petitioner Littlefield was unfairly punished for exercising his constitutional rights.

Abuse of discretion should always be subject to review, even when the setence is within statutory limits. In this case the trial court abused its discretion and violated petitioner's constitutional right to equal protection by assessing him an additional penalty of eight years for demanding his constitutional right to a jury trial. To give the trial court sole and unquestioned authority in assessing punishment without any chance for review at the appellate level, regardless of the individual fact situation of the particular case, would appear to be in conflict with the position of the United States Supreme Court as expressed in North Carolina v. Pearce, 395 U.S. 711 (1969) and United States v. Jackson, 390 U.S. 570 (1968), and with the holdings of the United States Courts of Appeal for the Fourth, Fifth, and Seventh Circuits as stated in Baker v. United States, 412 F2d 1069 (5th Cir. 1969); Thomas v. United States 368 F2d 941 (5th Cir. 1966); United States v. Martell, 335 F2d 764 (4th Cir. 1964); and United States v. Wiley, 278 F2d 500 (7th Cir. 1960).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Travis D. Shelton
1507 13th Street
Lubbock, Texas

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of April, 1973, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Solicitor General, Department of Justice, Washington, D. C. 20530. I further certify that all parties required to be served have been served.

Travis D. Shelton
1507 13th Street
Lubbock, Texas 79401

ATTORNEY FOR PETITIONER

APPENDIX A

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
FEB 20 1973
HOWARD K. PHILLIPS
Clerk

No. 72-1508 - JANUARY 1973 TERM

UNITED STATES OF AMERICA, Appellee, v. EDMOND VARNER LITTLEFIELD, Appellant.	Appeal From The United States District Court For The Western District of Oklahoma (D. C. # CR-72-131)

Travis D. Shelton, Lubbock, Texas, for Appellant.

William R. Burkett, United States Attorney, for Appellee.

Before LEWIS, Chief Judge, SETH, Circuit Judge, and CHRISTENSEN, District Judge.

PER CURIAM.

The appellant and Garland D. Gorden were charged in a one count indictment with armed robbery in violation of 18 U.S.C. §§ 2113(a) and (d). The defendant Gorden entered a plea of guilty. Appellant was tried, the jury

found him guilty, and he has taken this appeal.

On February 14, 1972, the First National Bank of Hammond, Oklahoma, was robbed by a lone gunman who escaped in a yellow pickup truck. Shortly thereafter the pickup was seen by a local farmer, stopped on the road, its driver talking with the driver of a red 1970 Chevrolet. The yellow pickup was later found abandoned near a deserted farmhouse.

Several local residents had seen the red 1970 Chevrolet "hanging around" the vicinity of Hammond for several days prior to the robbery and its Oklahoma license number had been noted. Agents of the Federal Bureau of Investigation traced the license number of the car, and found that it was registered in the name of E. V. Littlefield, the appellant herein.

A codefendant, Garland D. Gorden, who entered a guilty plea to the charge of robbing the bank and who appeared for the Government at appellant's trial, testified that he and appellant had driven to Amarillo, Texas, and thence to Albuquerque, New Mexico, where they divided the money from the bank robbery; also that they then traveled to Arizona and then to Las Vegas, Nevada, where they each purchased $1,000.00 of American Express money orders.

They separated at this point, with plans to meet the following week in Hot Springs, Arkansas.

On his way through Oklahoma, presumably on his way to Arkansas, appellant was stopped by agents of the FBI who saw the car and license number. Appellant identified himself to the agents, and they told him they wished to question him regarding the Hammond bank robbery. He was given the Miranda warnings, signed a waiver, and then requested that he be able to see an attorney. The agents transported him to an attorney's office in Anadarko, Oklahoma. Upon leaving the lawyer's office, appellant informed the agents that he did not wish to make a statement. He was then formally placed under arrest and transported to Oklahoma City where he was taken before a magistrate.

Four days later appellant was questioned by two FBI agents. After stating that he understood his rights and wished to talk anyway (appellant refused to sign the waiver of rights form at this interview), he gave an oral statement to the agents. The statement was offered in evidence at the trial. After a hearing out of the jury's presence, the trial court held that appellant had been properly advised of his Miranda rights and determined that the

oral statement was admissible.

Appellant's first alleged point of error is that the FBI agents did not have sufficient probable cause to arrest appellant and that the facts known by the arresting officers were insufficient to meet the requirements of 18 U.S.C. § 3052, which relates to arrests by FBI agents. We said in Moran v. United States, 404 F.2d 663 (10th Cir.), at pp. 666-7:

> "Under 18 U.S.C. § 3052, an F.B.I. agent may make an arrest for any federal offense committed in his presence, or for any federal felony which he has reasonable grounds to believe that the person arrested has committed or is committing. Lee v. United States, 363 F.2d 469, cert. den. 385 U.S. 947, 87 S.Ct. 323, 17 L.Ed.2d 227. For legal purposes, the 'reasonable grounds' basis of this statute is the same as the Fourth Amendment's requirement that arrest may be made only upon 'probable cause.' As stated by Mr. Justice Stewart in Beck v. State of Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964), probable cause for officers to make an arrest without warrant rests upon 'whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information, were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.'"

Here the arresting agents knew that the bank had been robbed by someone later seen talking to the driver of a red 1970 Chevrolet. The agents also knew that the automobile was registered to E. V. Littlefield. Appellant

identified himself as E. V. Littlefield when stopped by the agents. The automobile had also been seen in the vicinity of Hammond shortly before the bank robbery and on the morning of the bank robbery. Under these circumstances, we are of the opinion that the arresting officers had reasonable grounds to believe that appellant had committed a felony, and therefore find that the arrest was lawful.

Appellant next contends that certain statements made by the prosecution in closing arguments were improper comments on appellant's failure to testify and thus reversible error.

We said in Knowles v. United States, 224 F.2d 168 (10th Cir.), that any comment on the accused's failure to testify, whether direct or indirect, was reversible error. We went on to say, however, that this did not preclude the prosecutor from pointing out that there was a lack of evidence on a point if it was not intended to be a comment on the defendant's failure to testify. We have examined the record, and the statement did not have the effect of pointing out that the defendant had not testified. See United States v. Reid, 415 F.2d 294 (10th Cir.), cert. denied, 397 U.S. 1022. The trial court was correct in

overruling the objection made by defense counsel that there was a direct comment on the failure of the defendant to testify.

Appellant next contends that he was punished for exercising his constitutional right to be tried by a jury and his right to remain silent.

Appellant was sentenced to eighteen years in prison. Under the applicable statute, 18 U.S.C. § 2113(d), appellant could have been sentenced to twenty-five years in prison and fined $10,000.00. This court has repeatedly stated that so long as the sentence imposed by the trial court is within statutory limits, the trial court has sole discretion to determine the sentence. United States v. Stidham, 459 F.2d 297 (10th Cir.).

Appellant's final contention is that the trial court erroneously admitted his oral statement into evidence. The trial judge, as indicated above, conducted a hearing outside the presence of the jury and determined that appellant had been informed of his rights as required by Miranda v. Arizona, 384 U.S. 436. The trial court then found that appellant had knowingly waived those rights and held that the oral statement given to the FBI agents was admissible in evidence since it was made voluntarily. We hold this

to be correct, although one of the interrogating officers was aware that appellant was attempting to retain an attorney, because the appellant was not represented by counsel at the time, and the finding of the trial court that appellant had knowingly waived his rights after being given the full Miranda warnings is supported by the record.

Finding no error, the judgment of the trial court is affirmed.

O.K. TO FILE Fred Daugherty
U.S. DISTRICT JUDGE

APPENDIX B

72-131 Cr. U.S. vs. Edmond Varner Littlefield

JANUARY TERM - FEBRUARY 20, 1973

Before Honorable David T. Lewis, Chief Judge, Honorable Oliver Seth, Circuit Judge, and Honorable A. Sherman Christensen, Senior District Judge

UNITED STATES OF AMERICA,
Appellee,
v.
EDMOND VARNER LITTLEFIELD,
Appellant.

No. 72-1508

FILED
MAR 29 1973
JOHN G. HARRIS
CLERK, U.S. DISTRICT COURT
By Mae Ellsmen
DEPUTY

This cause came on to be heard on the record on appeal from the United States District Court for the WESTERN DISTRICT ~~OF OKLAHOMA~~ and was argued by counsel. On consideration whereof, it is ordered that the judgment of said court is ~~AFFIRMED~~. It is further ordered by this court that EDMOND VARNER LITTLEFIELD, appellant, surrender himself to the custody of the United States Marshal for the WESTERN DISTRICT OF OKLAHOMA in execution of the judgment and sentence imposed upon him within ten days from and after the date of the filing of the mandate of this court in said district court.

A true copy
Teste

Howard K. Phillips
Clerk, U. S. Court of Appeals, Tenth Circuit

Deputy Clerk

HOWARD K. PHILLIPS,
Clerk

By: Deputy Clerk 3.29.73

Mae Ellsmen

APPENDIX C

JANUARY TERM - MARCH 19, 1973

Before Honorable David T. Lewis, Chief Judge, Honorable Oliver Seth, Circuit Judge, and Honorable A. Sherman Christensen, Senior District Judge

UNITED STATES OF AMERICA,	)	
	)	
Appellee,	)	
	)	
v.	)	No. 72-1508
	)	
EDMOND VARNER LITTLEFIELD,	)	
	)	
Appellant.	)	

This matter comes on for consideration of the petition for rehearing and in the alternative for a stay of mandate filed by the appellant.

Upon consideration whereof, the petition for rehearing and for a stay of mandate are denied.

Howard K. Phillips

HOWARD K. PHILLIPS,
Clerk

APPENDIX D

JUDGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25a

United States District Court

FOR THE

FILED: July 11, 1972
Ron D. Hawks, Clerk

By /s/Vera Eddleman
Deputy

United States of America

v. No. 72-131 CRIMINAL

[redacted]

On this 11th day of July 19 72 came the attorney for the government and the defendant appeared in person and by his attorney, Stephen Jones, Esq.

It Is ADJUDGED that the defendant upon his plea of guilty and the Court being satisfied there is a factual basis for the plea has been convicted of the offense of violation of Title 18, U.S.C., Section 2113(a), (bank robbery), as charged in the one count of the Indictment,

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JUL 17 1972
U. S. ATTORNEY
W. D. OKLA.

and the attorney whether they have as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years on the one count of the Indictment, as provided by Title 18, U.S.C., Section 4208(a)(2), or until the defendant is otherwise discharged as provided by law.

It Is ADJUDGED that the defendant is remanded to the custody of the U. S. Marshal.

It Is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Luther Bohanon
United States District Judge.

The Court recommends commitment to [redacted], Clerk

[redacted], Clerk.

A True Copy. Certified this 11th day of July, 1972

(Signed) Ron D. Hawks, (F.) [redacted]
Clerk. *Deputy Clerk.*

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1398

EDMOND VARNER LITTLEFIELD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner challenges the existence of probable cause for his arrest and the severity of his sentence.

Following a jury trial in the United States District Court for the Western District of Oklahoma, petitioner was found guilty of having committed armed robbery of a federally insured bank in violation of 18 U.S.C. 2113(a) and (d). He was sentenced to eighteen years' imprisonment. The court of appeals affirmed (Pet. App. A).

Petitioner's contention that the agents of the F.B.I. did not have probable cause to arrest him is fully answered in the opinion of the court of appeals, on which we rely (Pet. App. A, pp. 4-5). As the opinion points out, the agents knew at the time of arrest that the robber had fled from the bank in a yellow pickup truck, which was later found abandoned. Shortly after

the robbery, the driver of the pickup was seen stopped in the road talking with the driver of a 1970 red Chevrolet. Several local residents had noticed the Chevrolet in the vicinity of the robbery for several days prior to the robbery, and the license number had been noted. Agents of the F.B.I. had traced the license number and found that it was registered in the name of E. V. Littlefield, the petitioner. Petitioner was later stopped by the authorities while driving the Chevrolet and identified himself; he was then placed under arrest. These facts, as the court below held, established probable cause.

Petitioner's claim that he was penalized for exercising his right to trial because he received a more severe sentence than his co-defendant, who pleaded guilty, is wholly unsupported and rests solely on speculation. As the court below pointed out, the sentence was well within the statutory limit and thus is not reviewable in the absence of an affirmative showing that the exercise of sentencing discretion was illegal (Pet. App. A, p. 6).[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.

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[1] This Court recently denied certiorari in the case on which the court below relied in disposing of petitioner's sentencing contention, *United States* v. *Stidham*, 459 F. 2d 297 (C.A. 10), certiorari denied, 409 U.S. 868.